



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-T- INC.

DATE: AUG. 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an information technology consulting and staffing company, seeks to temporarily employ the Beneficiary as a “systems administrator” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner asserts that the Director’s findings were incorrect. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.

For H-1B approval, the Petitioner must demonstrate a legitimate need for an employee exists and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. In this matter, the Petitioner indicated that the Beneficiary will work at its location as a systems administrator. However, the Petitioner did not provide sufficient, credible evidence to establish in-house employment for the Beneficiary for the requested employment period.¹

The Petitioner stated that the Beneficiary will work in-house on [REDACTED] project for [REDACTED] (client).² In support of this assertion, the Petitioner submitted a service agreement (SA) with the client executed on March 9, 2017. The SA indicates that the client is “in the business of providing global [REDACTED] investments and restructuring solutions.” In response to the Director’s request for evidence (RFE), the Petitioner states that the purpose of [REDACTED] project is to “enable physicians to drive patient

¹ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

² The record does not establish whether [REDACTED] is the Petitioner’s or the client’s product.

A search of the Internet indicates that the client lists the Petitioner’s [REDACTED] address as one of its place of business. The evidence of the record does not reconcile this discrepancy.

participation in devising a personalized care plan with defini[n]ed care goals, treatment plans and health improvement activities.” The record does not demonstrate how the client’s business in providing investments and restructuring solutions relates to developing a [REDACTED] health management system. Further, the SA states that the Petitioner will “provide services of providing Mobile applications development and maintenance services, more particularly specified in ‘Annexure I.’” However, “Annexure I” does not provide additional details about “Mobile applications development and maintenance services” that the Petitioner will provide to the client. Instead, it discusses the Petitioner’s responsibilities as a service provider to the client such as setting rate, expense reimbursement and conversion terms (section 1.1(i)) or entering into contact with each independent contractor (section 1.1(iii)). The record also contains a purchase order (PO) for the Beneficiary’s services. Notably, the PO states that it is effective from “03/27/2016”; however, it also states that it is “governed by the terms and conditions of the vendor agreement dated February 27, 2017.” In other words, the PO is not properly executed because it became effective prior to the agreement that it is governed by. Further, the record does not contain the vendor agreement dated February 27, 2017. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Further, the record does not sufficiently establish the duties of the proffered position. As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

Here, the Petitioner stated that the Beneficiary will work on a project titled [REDACTED] for the client. Notably, the record does not contain a description of job duties directly from the client. Further, the client states that “at least a bachelor’s degree (or its equivalent) in a closely related field” is required but does not identify the related fields. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”). Thus, while a general-purpose bachelor’s degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

Notably, the Petitioner submitted a list of duties in its support letter, and also submitted a revised list of duties in its RFE response. To determine whether a particular job qualifies as a specialty occupation, we do not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The duties submitted in the Petitioner's support letter are verbatim from the O*NET OnLine Summary Report for the occupation "Network and Computer Systems Administrators," SOC code 15-1142. However, providing job duties for a proffered position from O*NET is generally not sufficient for establishing H-1B eligibility. While this type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, it cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description does not adequately convey the substantive work that the beneficiary will perform within the petitioner's business operation. In establishing a position as a specialty occupation, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of the project on which he will work, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

In its RFE response, the Petitioner submitted a revised list of duties, in which it expanded on some of the duties previously listed while keeping the same verbatim language contained in the O*NET OnLine Summary Report. Furthermore, after listing the duties to which the Beneficiary would devote 100% of his time, the Petitioner listed additional duties that the Beneficiary may perform. These additional duties are also verbatim from the O*NET OnLine Summary Report. Furthermore, the Petitioner did not state which duties these additional ones would replace as the ones already listed encompass 100% of the Beneficiary's time.

Even with the revised duties provided in its RFE response, the Petitioner did not submit a job description which adequately conveys the substantive work to be performed by the Beneficiary. Rather, the Petitioner described the proposed duties in terms of generalized and generic functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness and specialization of the proffered position or its duties. For example, the Petitioner stated that the Beneficiary would be involved "in installing all the required applications to support the organization's business" and "in installing mail servers, file servers and many other servers required by the organization." However, these statements provide no insight into the Beneficiary's actual duties, nor do they include any information regarding the specific tasks that the Beneficiary would perform for [REDACTED] project. The Petitioner also stated that the Beneficiary would be "[s]ecuring network systems by establishing and enforcing policies...." but it did not explain the Beneficiary's specific duties and responsibilities in relation to the project. Furthermore, the Petitioner did not elaborate on the "policies" the Beneficiary would establish and enforce in the capacity he is hired for the client's project.

Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described does not communicate (1) the actual work that the Beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

Based on the above discussion, the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation.

III. CONCLUSION

The evidence of the record does not establish that the proffered position qualifies as a specialty occupation.³

ORDER: The appeal is dismissed.

Cite as *Matter of M-T- Inc.*, ID# 1351005 (AAO Aug. 31, 2013)

³ Because this issue is dispositive of the appeal, we need not and will not further address other issues we observe in the record.